

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI  
ŌTAUTAHI ROHE**

[2021] NZERA 564  
3059152

BETWEEN

DJK  
Applicant

AND

CERES NEW ZEALAND, LLC  
Respondent

Member of Authority: Philip Cheyne

Representatives: DJK, the Applicant  
Sarah Townsend, counsel for the Respondent

Submissions Received: 18 October 2021 from the Applicant  
11 October 2021 from the Respondent

Date of Determination: 15 December 2021

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**COSTS DETERMINATION OF THE AUTHORITY**

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**A. DJK is to pay Ceres New Zealand LLC costs of \$4,000.00 by  
Friday 28 January 2022.**

[1] There is a permanent non-publication order covering the applicant, made at an earlier stage of these proceedings.<sup>1</sup>

[2] In a determination in September 2021, I dismissed DJK's claims and reserved costs. I now have submissions from both parties. This determination resolves the issue of costs.

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<sup>1</sup> *Ceres New Zealand LLC v DJK* [2020] NZEmpC 153.

[3] Ceres New Zealand LLC seeks costs in line with the daily tariff often applied by the Authority in resolving costs. A further \$300.00 is claimed for the application for costs.

[4] DJK refers to the time taken to bring the matter to a conclusion, significantly attributable to the respondent's unsuccessful challenge to the Employment Court against the Authority's initial determination that DJK had raised a personal grievance claim within time. DJK did not seek costs, believing that they would then and in the future lie where they fell.

[5] DJK was self-represented, so might not have been able to obtain an order for costs earlier. In any event, nothing suggests that there was a shared understanding that costs would lie where they fell. I consider I must assess the claim for costs on the basis of principle. The starting point is that a successful party is usually entitled to a contribution to their legal costs reasonably incurred. Ceres New Zealand LLC was successful, so is entitled to a contribution to their costs, subject to other relevant considerations.

[6] DJK incurred significant professional and legal fees, arising from events at work prior to the dismissal. The fees appear to relate to matters in respect of which DJK unsuccessfully advanced disadvantage grievance claims. I accept that the fees have contributed to DJK's present financial situation. However, the fees incurred by DJK are not a reason for costs in the present matter to lie where they fall.

[7] DJK also incurred fees for counselling. I accept that counselling was needed to assist DJK in response to workplace issues. However, DJK's former employer was not found to be legally liable for that state of affairs. Those fees are not a reason for costs in the present matter to lie where they fall.

[8] DJK earns a low income from DJK's start-up business. DJK has incurred significant health costs in the previous several years. Further significant health costs are in prospect. There is no reason to doubt DJK's submissions. These health costs, the earlier mentioned professional fees, DJK's limited income following the earlier dismissal for redundancy and DJK's limited income at present can properly be considered as reasons to moderate the amount of costs that might otherwise be ordered.

[9] I agree with counsel's submission that the often applied daily tariff approach is appropriate. The investigation meeting took several hours less than a full day, but written

submissions were exchanged later on a timetable. The factual background was quite complex. I fix the appropriate starting point as a whole day at the daily tariff rate for the first day. However, I am not satisfied that there should be an additional amount to cover the costs application. There is no reason to treat that application as standing on its own, so as to attract an uplift.

[10] I consider that DJK's limited financial means warrants a modest reduction in the final sum fixed for costs. I reduce the amount from \$4,500.00 to \$4,000.00 to account for that point. I was not asked to order payment by instalments. However, given the time of the year, I fix a slightly longer time for payment to fall due, to give the parties an opportunity to make any arrangements.

Philip Cheyne  
Member of the Employment Relations Authority